

# Exhibit 43

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*  
Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To  
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.  
Local Rule 56.1 Statement of Undisputed Material Facts  
in Support of Their Motion For Summary Judgment



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## Roxane Loyalty Multisource Agreement Chain Warehouse

### General Plan Overview:

Chain Warehouse, as defined on the signature line of this Agreement, will receive a rebate on select Roxane Laboratories, Inc. ("Roxane") Loyalty Multisource products in return for a marketshare commitment on such multisource generic products.

### Definitions:

Chain Pharmacy (s)- a network of 5 or more DEA registered retail facilities each of which is staffed by a Registered Pharmacist that dispense prescription medications to the public.

Chain Warehouse- a corporate system and freestanding facility (s) which purchases and warehouses brand and generic pharmaceuticals and through its sales and distribution network provides such pharmaceuticals to its corporately owned or franchised Chain Pharmacies.

Preferred Product Marketshare- Majority of all unit sales (tablets, capsules, and vials), from the Chain Warehouse to its Chain Pharmacy (s) for generic versions of the products on Attachment 1.

Roxane Loyalty Multisource Products- those products listed in Attachment 1 which are distributed by Roxane Laboratories, Inc.

Products- pharmaceutical preparations as listed in the first column of Attachment 1.

Direct Net Sales- direct sales to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Indirect Contract Purchases- indirect contract sales from wholesaler to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Rebate- an incentive payment determined by multiplying Direct Net Sales by Roxane to Chain Warehouse of Roxane Loyalty Multisource Products listed on Attachment 1, by either 3% or 5%. Indirect contract purchases of preferred products from wholesaler to Chain Warehouse are rebated by the same calculation.

### Chain Warehouse Commitment:

- I. Chain Warehouse represents to Roxane that it is a Chain Pharmacy with a Chain Warehouse which in the course of its business provides specific multisource generic products as preferred product.
- II. Chain Warehouse agrees to exclusively stock those Roxane Loyalty Multisource Products as identified in Attachment 1 in its Warehouse.
- III. Chain Warehouse agrees to offer the Roxane Loyalty Multisource Products in all distribution center locations of its Chain Warehouse and offer to its Chain Pharmacy (s) as the preferred product for such multisource generic product.
- IV. Chain Warehouse shall maintain and Roxane shall supply inventories of Roxane Loyalty Multisource Product at all of its distribution center locations serving its Chain Pharmacies.
- V. Chain Warehouse may only participate in one (1) incremental incentive program for each Roxane Loyalty Multisource Product. It is agreed and understood that the incremental incentive programs listed in Attachment 3 will be discontinued upon the payment by Roxane to Chain Warehouse of all monies due from those contracts and the signing of this Agreement.

- VI. All Roxane Loyalty Multisource Products in Attachment 1 must receive Preferred Product Marketshare for Chain Warehouse to be eligible for the Rebate.
- VII. Chain Warehouse covenants that the Roxane Loyalty Multisource Products purchased pursuant to this Agreement shall only be sold to its own Chain Pharmacies ("own use"). Sale of Roxane Loyalty Multisource Products to any wholesaler, distributor, or another customer shall be considered a material breach of this Agreement. Mail order subsidiary pharmacies at the discretion of Chain Warehouse may be included.
- VIII. Chain Warehouse agrees to provide mutually acceptable documentation to Roxane each calendar quarter of the marketshare attained by each Roxane Loyalty Multisource Product in this Agreement. (Documentation to be aggregate of Chain Warehouse distribution center locations).

**Roxane Commitment**

- I. Roxane represents that if Chain Warehouse fulfills all of the Chain Warehouse Commitment obligations of this Agreement, it shall receive a Rebate of either 3% or 5% (as defined in Attachment 2) on its purchases of those Roxane Loyalty Multisource Products listed in Attachment 1.
- II. The Rebate, in the form of a credit for purchase of Roxane Products, shall be issued in three (3) equal amounts over the three quarters following the quarter of purchase and after receipt by Roxane of the documentation verifying Preferred Marketshare for the current calendar quarter. If participation in the Agreement commences during a calendar quarter, the rebate will be calculated from the first business day of the month following the signing date of the Agreement (retroactive to 1/1/99) or the date of the placement of the stocking order to comply with the Agreement, whichever is later. (See Addendum #1)
- III. Roxane agrees that prior to any Rebate decrease or price increase for the items listed in Attachment 1, that such change will not be effective until 90 days after the date of written notice.
- IV. Roxane agrees that if it discontinues the manufacture of or fails to supply at a 95% service level any non-exclusive Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the discontinuation or supply failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for their duration.
- V. Roxane agrees that if it fails to meet competitive market pricing of any Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for the duration of the agreement.

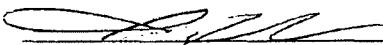
**Other Terms of Agreement**

- The term of this Agreement shall be one (1) year. This Agreement may be extended annually for one (1) year period (s) upon written agreement and acceptance by both parties.
- Failure of Chain Warehouse to provide accurate documentation within 90 days of the end of the calendar quarter shall cause forfeiture of the Rebate.
- Roxane reserves the right to audit Preferred Marketshare data provided by the Chain Warehouse within twelve (12) months of submission of such data.
- Except as required by law, each party shall at all times, whether during the term of this Agreement or subsequent thereto, honor, maintain and protect the confidentiality of the terms, conditions, and information provided pursuant to this Agreement as well as the substance of all discussions pertaining thereto. Nothing contained herein, however, shall prevent the disclosure of Product prices in response to requests for pricing information made by governmental agencies in connection with federal, state, or local governmental inquiries.
- Chain Warehouse represents that its receipt of rebates, credits, adjustments, discounts and performance of its obligations under the Agreement do not violate any of its legal, contractual or other obligations. The Rebate may constitute a discount or reduction in purchase price which may have to be disclosed to

the governmental agencies under the regulations that govern the Medicaid program or other similar federal or state health care programs.

- Roxane will comply with all of its reporting obligations imposed under federal law for discounts and rebates and take the discount into account in computing their "average manufacturer price" and "best price" under the Medicaid drug rebate program.
- Chain Warehouse hereby offers Roxane the opportunity to counter any competitive pricing or proposals offered by any competitor, in order to maintain sales of any Product which Chain Warehouse is purchasing from Roxane. Chain Warehouse shall provide Roxane notice of any competitive proposal and allow Roxanne five (5) business days to respond.
- Violation by Chain Warehouse of the "own use" covenant in this Agreement will be considered a material breach, permitting Roxane to cancel this Agreement in its entirety immediately upon written notice. In addition, Chain Warehouse would forfeit any earned or accrued but unpaid rebates for the disputed portion of its purchases.
- The deduction of the Rebate by Chain Warehouse prior to Roxane's issuance of credit, or prior to the payment due date shall be considered a material breach of this Agreement permitting Roxane to cancel this Agreement in its entirety upon written notice if not resolved within 30 days of notice to Chain Warehouse.
- This Agreement may not be assigned by either party without the written agreement of the other party.
- This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, and any and all disputes arising under or concerning this Agreement shall be before the courts of the State of Ohio.
- Roxane reserves the right to modify this Agreement at its own discretion, in writing, upon 30 days written notice to Chain Warehouse. Either party may terminate this Agreement at any time, provided 30 days written notice is given to the other party, and further provided that if Chain Warehouse terminates the Agreement prior to the one year term, such action shall result in Chain Warehouse receiving what they had earned.

Rite Aid, ("Chain Warehouse"):

  
 Signature  
Brian Wechsler  
 Printed Name  
Director Pharm Purch 4/23/99  
 Title Date Title

Roxane Laboratories, Inc.:

Signature Attached On Select Version/rrr  
 Signature  
  
 Printed Name  
  
 Date

Effective Term

From: 4/1/99  
 Date  
 To: 3/31/00 rrr  
 Date

**ATTACHMENT #1**

**Roxane Loyalty Multisource Agreement**  
**Chain Warehouse**

**Roxane Laboratories, Inc. Loyalty Product List:**

Group B

<b><u>PRODUCT</u></b>	<b><u>Strength</u></b>
AZATHIOPRINE TABLETS	50mg
HYDROXYUREA CAPSULES	500mg

**ATTACHMENT #2**

**Roxane Loyalty Multisource Agreement**  
**Chain Warehouse**

**Roxane laboratories, Inc. Loyalty Multisource Product Rebate:**

**Group B**  
**Azathioprine and Hydroxyurea**

**3%**

**5**

**RLI-TX 29559**  
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**Attorneys' Eyes Only**

RLI-AWP-00128911  
ROX034-5460

**ATTACHMENT #3**

**Roxane Loyalty Multisource Agreement**  
**Chain Warehouse**

None

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**RLI-TX 29560**  
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**Attorneys' Eyes Only**

RLI-AWP-00128912  
ROX034-5461 L



**COPY**

## Roxane Respiratory Multisource Agreement Chain Warehouse

### General Plan Overview:

Chain Warehouse, as defined on the signature line of this Agreement, will receive a rebate on select Roxane Laboratories, Inc. ("Roxane") Respiratory Multisource products in return for a marketshare commitment on such multisource generic products.

### Definitions:

Chain Pharmacy (s)- a network of 5 or more DEA registered retail facilities each of which is staffed by a Registered Pharmacist that dispense prescription medications to the public.

Chain Warehouse- a corporate system and free-standing facility (s) which purchases and warehouses brand and generic pharmaceuticals and through its sales and distribution network provides such pharmaceuticals to its corporately owned or franchised Chain Pharmacies.

Preferred Product Marketshare- Majority of all unit sales (tablets, capsules, and vials), from the Chain Warehouse to its Chain Pharmacy (s) for generic versions of the products on Attachment 1.

Roxane Respiratory Multisource Products- those products listed in Attachment 1 which are distributed by Roxane Laboratories, Inc.

Products- pharmaceutical preparations as listed in the first column of Attachment 1.

Direct Net Sales- direct sales to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Indirect Contract Purchases- indirect contract sales from wholesaler to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Rebate- an incentive payment determined by multiplying Direct Net Sales by Roxane to Chain Warehouse of Roxane Respiratory Multisource Products listed on Attachment 1, by 1%. Indirect contract purchases of preferred products from wholesaler to Chain Warehouse are rebated by the same calculation.

### Chain Warehouse Commitment:

- I. Chain Warehouse represents to Roxane that it is a Chain Pharmacy with a Chain Warehouse which in the course of its business provides specific multisource generic products as preferred product.
- II. Chain Warehouse agrees to exclusively stock those Roxane Respiratory Multisource Products as identified in Attachment 1 in its Warehouse.
- III. Chain Warehouse agrees to offer the Roxane Respiratory Multisource Products in all distribution center locations of its Chain Warehouse and offer to its Chain Pharmacy (s) as the preferred product for such multisource generic product.
- IV. Chain Warehouse shall maintain and Roxane shall supply inventories of Roxane Respiratory Multisource Product at all of its distribution center locations serving its Chain Pharmacies.
- V. Chain Warehouse may only participate in one (1) incremental incentive program for each Roxane Respiratory Multisource Product. It is agreed and understood that the incremental incentive programs listed in Attachment 2 will be discontinued upon the payment by Roxane to Chain Warehouse of all monies due from those contracts and the signing of this Agreement.

- VI. All Roxane Respiratory Multisource Products in Attachment 1 must receive Preferred Product Marketshare for Chain Warehouse to be eligible for the Rebate
- VII. Chain Warehouse covenants that the Roxane Respiratory Multisource Products purchased pursuant to this Agreement shall only be sold to its own Chain Pharmacies ("own use"). Sale of Roxane Respiratory Multisource Products to any wholesaler, distributor, or another customer shall be considered a material breach of this Agreement. Mail order subsidiary pharmacies at the discretion of Chain Warehouse may be included.
- VIII. Chain Warehouse agrees to provide mutually acceptable documentation to Roxane each calendar quarter of the marketshare attained by each Roxane Respiratory Multisource Product in this Agreement. (Documentation to be aggregate of Chain Warehouse distribution center locations)

**Roxane Commitment**

- I. Roxane represents that if Chain Warehouse fulfills all of the Chain Warehouse Commitment obligations of this Agreement, it shall receive a Rebate of 1% on its purchases of those Roxane Respiratory Multisource Products listed in Attachment 1.
- II. The Rebate, in the form of a credit for purchase of Roxane Products, shall be issued within 30 days of receipt by Roxane of the documentation verifying Preferred Marketshare for the previous calendar quarter. If participation in the Agreement commences during a calendar quarter, the rebate will be calculated from the first business day of the month following the signing date of the Agreement (retroactive to 1/1/99) or the date of the placement of the stocking order to comply with the Agreement, whichever is later.
- III. Roxane agrees that prior to any Rebate decrease or price increase for the items listed in Attachment 1, that such change will not be effective until 90 days after the date of written notice.
- IV. Roxane agrees that if it discontinues the manufacture of or fails to supply at a 95% service level any non-exclusive Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the discontinuation or supply failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for their duration.
- V. Roxane agrees that if it fails to meet competitive market pricing of any Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for the duration of the agreement.

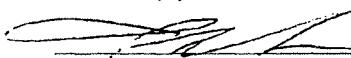
**Other Terms of Agreement**

- The term of this Agreement shall be one (1) year. This Agreement may be extended annually for one (1) year period (s) upon written agreement and acceptance by both parties.
- Failure of Chain Warehouse to provide accurate documentation within 90 days of the end of the calendar quarter shall cause forfeiture of the Rebate.
- Roxane reserves the right to audit Preferred Marketshare data provided by the Chain Warehouse within twelve (12) months of submission of such data.
- Except as required by law, each party shall at all times, whether during the term of this Agreement or subsequent thereto, honor, maintain and protect the confidentiality of the terms, conditions, and information provided pursuant to this Agreement as well as the substance of all discussions pertaining thereto. Nothing contained herein, however, shall prevent the disclosure of Product prices in response to requests for pricing information made by governmental agencies in connection with federal, state, or local governmental inquiries.
- Chain Warehouse represents that its receipt of rebates, credits, adjustments, discounts and performance of its obligations under the Agreement do not violate any of its legal, contractual or other obligations.

The Rebate may constitute a discount or reduction in purchase price which may have to be disclosed to the governmental agencies under the regulations that govern the Medicaid program or other similar federal or state health care programs.

- Roxane will comply with all of its reporting obligations imposed under federal law for discounts and rebates and take the discount into account in computing their "average manufacturer price" and "best price" under the Medicaid drug rebate program.
- Chain Warehouse hereby offers Roxane the opportunity to counter any competitive pricing or proposals offered by any competitor, in order to maintain sales of any Product which Chain Warehouse is purchasing from Roxane. Chain Warehouse shall provide Roxane notice of any competitive proposal and allow Roxane 5 business days to respond.
- Violation by Chain Warehouse of the "own use" covenant in this Agreement will be considered a material breach, permitting Roxane to cancel this Agreement in its entirety immediately upon written notice. In addition, Chain Warehouse would forfeit any earned or accrued but unpaid rebates for the disputed portion of its purchases.
- The deduction of the Rebate by Chain Warehouse prior to Roxane's issuance of credit, or prior to the payment due date shall be considered a material breach of this Agreement permitting Roxane to cancel this Agreement in its entirety upon written notice if not resolved within 30 days of notice to Chain Warehouse.
- This Agreement may not be assigned by either party without the written agreement of the other party.
- This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, and any and all disputes arising under or concerning this Agreement shall be before the courts of the State of Ohio.
- Roxane reserves the right to modify this Agreement at its own discretion, in writing, upon 30 days written notice to Chain Warehouse. Either party may terminate this Agreement at any time, provided 30 days written notice is given to the other party, and further provided that if Chain Warehouse terminates the Agreement prior to the one year term, such action shall result in Chain Warehouse receiving what they had earned.

Rite Aid, ("Chain Warehouse"):




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Signature

Irwin Wechsler

Printed Name

Director Pharm. Purch.

Title

4/23/99

Date

Roxane Laboratories, Inc.:

Signature Attached On Select Version rrr

Signature

Printed Name

Title

Date

Effective Term

From: 4/1/99

Date

To: 3/31/00 rrr

Date

**ATTACHMENT #1**

**Roxane Respiratory Multisource Agreement**  
**Chain Warehouse**

**Roxane Laboratories, Inc. Respiratory Product List:**

<b>PRODUCT</b>	<b>Strength</b>
ACETYLCYSTEINE SOLUTION	10% 20%
IPRATROPIUM BROMIDE INHALATION SOLUTION	0.02%
METAPROTERENOL INHALATION SOLUTION	0.40% 0.60%
SODIUM CHLORIDE INHALATION SOLUTION	0.90%

**ATTACHMENT #2**

**Roxane Respiratory Multisource Agreement**  
**Chain Warehouse**

None

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04/23/99 - Wholesale Multiproduct.doc

**RLI-TX 29565  
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Attorneys' Eyes Only**

RLI-AWP-00128917  
ROX034-5466 L



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## Roxane Select Multisource Agreement Chain Warehouse

### General Plan Overview:

Chain Warehouse, as defined on the signature line of this Agreement, will receive a rebate on Roxane Laboratories, Inc. ("Roxane") Select Multisource products in return for a marketshare commitment on such multisource generic products.

### Definitions:

Chain Pharmacy (s)- a network of 5 or more DEA registered retail facilities each of which is staffed by a Registered Pharmacist that dispense prescription medications to the public.

Chain Warehouse- a corporate system and free-standing facility (s) which purchases and warehouses brand and generic pharmaceuticals and through its sales and distribution network provides such pharmaceuticals to its corporately owned or franchised Chain Pharmacies.

Preferred Product Marketshare- Majority of all unit sales (tablets, capsules, and vials), from the Chain Warehouse to its Chain Pharmacy (s) for generic versions of the products on Attachment 1.

Roxane Select Multisource Products- those products listed in Attachment 1 which are distributed by Roxane Laboratories, Inc.

Products- pharmaceutical preparations as listed in the first column of Attachment 1.

Direct Net Sales- direct sales to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Indirect Contract Purchases- indirect contract sales from wholesaler to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Rebate- an incentive payment determined by multiplying Direct Net Sales by Roxane to Chain Warehouse of Roxane Select Multisource Products listed on Attachment 1, by 1%. Indirect contract purchases of preferred products from wholesaler to Chain Warehouse are rebated by the same calculation.

### Chain Warehouse Commitment:

- I. Chain Warehouse represents to Roxane that it is a Chain Pharmacy with a Chain Warehouse which in the course of its business provides specific multisource generic products as preferred product.
- II. Chain Warehouse agrees to exclusively stock those Roxane Select Multisource Products as identified in Attachment 1 in its Warehouse with an Exclusive Marketshare.
- III. Chain Warehouse agrees to offer the Roxane Select Multisource Products in all distribution center locations of its Chain Warehouse and offer to its Chain Pharmacy (s) as the preferred product for such multisource generic product.
- IV. Chain Warehouse shall maintain and Roxane shall supply inventories of Roxane Select Multisource Product at all of its distribution center locations serving its Chain Pharmacies.
- V. Chain Warehouse may only participate in one (1) incremental incentive program for each Roxane Select Multisource Product. It is agreed and understood that the incremental incentive programs listed in Attachment 2 will be discontinued upon the payment by Roxane to Chain Warehouse of all monies due from those contracts and the signing of this Agreement.

The Rebate may constitute a discount or reduction in purchase price which may have to be disclosed to the governmental agencies under the regulations that govern the Medicaid program or other similar federal or state health care programs.

- Roxane will comply with all of its reporting obligations imposed under federal law for discounts and rebates and take the discount into account in computing their "average manufacturer price" and "best price" under the Medicaid drug rebate program.
- Chain Warehouse hereby offers Roxane the opportunity to counter any competitive pricing or proposals offered by any competitor, in order to maintain sales of any Product which Chain Warehouse is purchasing from Roxane. Chain Warehouse shall provide Roxane notice of any competitive proposal and allow Roxane 5 business days to respond.
- Violation by Chain Warehouse of the "own use" covenant in this Agreement will be considered a material breach, permitting Roxane to cancel this Agreement in its entirety immediately upon written notice. In addition, Chain Warehouse would forfeit any earned or accrued but unpaid rebates for the disputed portion of its purchases.
- The deduction of the Rebate by Chain Warehouse prior to Roxane's issuance of credit, or prior to the payment due date shall be considered a material breach of this Agreement permitting Roxane to cancel this Agreement in its entirety upon written notice if not resolved within 30 days of notice to Chain Warehouse.
- This Agreement may not be assigned by either party without the written agreement of the other party.
- This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, and any and all disputes arising under or concerning this Agreement shall be before the courts of the State of Ohio.
- Roxane reserves the right to modify this Agreement at its own discretion, in writing, upon 30 days written notice to Chain Warehouse. Either party may terminate this Agreement at any time, provided 30 days written notice is given to the other party, and further provided that if Chain Warehouse terminates the Agreement prior to the one year term, such action shall result in Chain Warehouse receiving what they had earned.

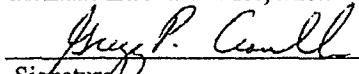
Rite Aid, ("Chain Warehouse"):

  
\_\_\_\_\_  
Signature

Lorraine Wechsler  
Printed Name

Director, Planch. Purch.      4/1/99  
Title    Date

Roxane Laboratories, Inc.:

  
\_\_\_\_\_  
Signature

Gregg P. Connell  
Printed Name

Head - Pricing / Contracting      6/4/99  
Title    Date

Effective Term

From: 4/1/99  
Date

To: 3/31/00 rrr  
Date

**ATTACHMENT #1**

- VI. All Roxane Select Multisource Products in Attachment 1 must receive Preferred Product Marketshare for Chain Warehouse to be eligible for the Rebate.
- VII. Chain Warehouse covenants that the Roxane Select Multisource Products purchased pursuant to this Agreement shall only be sold to its own Chain Pharmacies ("own use"). Sale of Roxane Select Multisource Products to any wholesaler, distributor, or another customer shall be considered a material breach of this Agreement. Mail order subsidiary pharmacies at the discretion of Chain Warehouse may be included.
- VIII. Chain Warehouse agrees to provide mutually acceptable documentation to Roxane each calendar quarter of the marketshare attained by each Roxane Select Multisource Product in this Agreement. (Documentation to be aggregate of Chain Warehouse distribution center locations)

**Roxane Commitment**

- I. Roxane represents that if Chain Warehouse fulfills all of the Chain Warehouse Commitment obligations of this Agreement, it shall receive a Rebate of 1% on its purchases of those Roxane Select Multisource Products listed in Attachment 1.
- II. The Rebate, in the form of a credit for purchase of Roxane Products, shall be issued within 30 days of receipt by Roxane of the documentation verifying Preferred Marketshare for the previous calendar quarter. If participation in the Agreement commences during a calendar quarter, the rebate will be calculated from the first business day of the month following the signing date of the Agreement (retroactive to 1/1/99) or the date of the placement of the stocking order to comply with the Agreement, whichever is later.
- III. Roxane agrees that prior to any Rebate decrease or price increase for the items listed in Attachment 1, that such change will not be effective until 90 days after the date of written notice.
- IV. Roxane agrees that if it discontinues the manufacture of or fails to supply at a 95% service level any non-exclusive Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the discontinuation or supply failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for their duration.
- V. Roxane agrees that if it fails to meet competitive market pricing of any Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for the duration of the agreement.

**Other Terms of Agreement**

- The term of this Agreement shall be one (1) year. This Agreement may be extended annually for one (1) year period (s) upon written agreement and acceptance by both parties.
- Failure of Chain Warehouse to provide accurate documentation within 90 days of the end of the calendar quarter shall cause forfeiture of the Rebate.
- Roxane reserves the right to audit Preferred Marketshare data provided by the Chain Warehouse within twelve (12) months of submission of such data.
- Except as required by law, each party shall at all times, whether during the term of this Agreement or subsequent thereto, honor, maintain and protect the confidentiality of the terms, conditions, and information provided pursuant to this Agreement as well as the substance of all discussions pertaining thereto. Nothing contained herein, however, shall prevent the disclosure of Product prices in response to requests for pricing information made by governmental agencies in connection with federal, state, or local governmental inquiries.
- Chain Warehouse represents that its receipt of rebates, credits, adjustments, discounts and performance of its obligations under the Agreement do not violate any of its legal, contractual or other obligations.

**Roxane Laboratories, Inc. Select Multisource Product List:**

<b>PRODUCT</b>	<b>Strength</b>
DICLOFENAC SODIUM TABLETS	25mg
	50mg
	75mg
RANITIDINE TABLETS	150mg
	300mg
ROXICET TABLETS	5mg/325mg
ROXICODONE TABLETS	5mg
ROXANOL ORAL SOLUTION	20mg/ml

**ATTACHMENT #2**

4

RLI-TX 29569  
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Attorneys' Eyes Only

RLI-AWP-00128921  
ROX034-5470

**Roxane Select Multisource Agreement**

None

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**RLI-TX 29570  
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Attorneys' Eyes Only**

RLI-AWP-00128922  
ROX034-5471 L

**COPY**



## **Roxane Commitment Agreement** **Chain Warehouse**

### **General Plan Overview:**

Chain Warehouse, as defined on the signature line of this Agreement, will receive a rebate on select Boehringer Ingelheim ("BI") products in return for a marketshare commitment on select Roxane Laboratories, Inc. ("Roxane") multisource generic products.

### **Definitions:**

Chain Pharmacy (s)- a network of 5 or more DEA registered retail facilities each of which is staffed by a Registered Pharmacist that dispense prescription medications to the public.

Chain Warehouse- a corporate system and free-standing facility (s) which purchases and warehouses brand and generic pharmaceuticals and through its sales and distribution network provides such pharmaceuticals to its corporately owned or franchised Chain Pharmacies.

Preferred Product Marketshare- Majority of all unit sales (tablets, capsules, and vials), from the Chain Warehouse to its Chain Pharmacy (s) for generic versions of the products on Attachment 1.

BI Brand Products- those products listed in Attachment 1, which are distributed by Boehringer Ingelheim Pharmaceuticals, Inc.

Roxane Multisource Generic Products- those products listed in Attachment 1 which are distributed by Roxane Laboratories, Inc. (Roxane Laboratories, Inc. Respiratory Product List, Roxane Laboratories, Inc. Loyalty Product List, Roxane Laboratories Inc, Select Product List)

Products- pharmaceutical preparations as listed in the first column of Attachment 1.

Direct Net Sales- direct sales to Chain Warehouse from manufacturer or wholesaler less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Indirect Contract Purchases- indirect contract sales from wholesaler to Chain Warehouse less any credits, rebates, stock adjustments, returns, and any other invoice reductions.

Rebate- an incentive payment determined by multiplying Direct Net Sales by BI or wholesaler to Chain Warehouse of BI Brand Products listed on Attachment 1, by 1%. Indirect contract purchases of preferred products from wholesaler to Chain Warehouse are rebated by the same calculation.

### **Chain Warehouse Commitment:**

- I. Chain Warehouse represents to Roxane that it is a Chain Pharmacy with a Chain Warehouse which in the course of its business provides specific multisource generic products as preferred product.
- II. Chain Warehouse agrees to exclusively stock those Roxane Multisource Generic Products as identified in Attachment 1 in its Warehouse\* with an Exclusive Marketshare.

\*EXCEPT AS OTHERWISE NOTED IN ADDENDUM #2

- III. Chain Warehouse agrees to offer the Roxane Multisource Generic Products in all distribution center locations of its Chain Warehouse and offer to its Chain Pharmacy (s) as the preferred product for such multisource generic product.
- IV. Chain Warehouse shall enforce compliance of Preferred Product Marketshare to its Chain Pharmacy by identifying products as preferred.
- V. Chain Warehouse shall maintain inventories of Roxane Multisource Generic Product at all of its distribution center locations\* serving its Chain Pharmacies.
- VI. Chain Warehouse may only participate in one (1) incremental incentive program for each Roxane Multisource Generic Product or BI Brand Product. It is understood and agreed that incremental incentive programs listed in attachment 2 will be discontinued upon signing of this Agreement.
- VII. All Roxane Multisource Generic Products in Attachment 1 must receive Preferred Product Marketshare for Chain Warehouse to be eligible for the Rebate.
- VIII. Chain Warehouse covenants that the Roxane Multisource Generic Products and BI Brand Products purchased pursuant to this Agreement shall only be sold to its own Chain Pharmacies ("own use"). Sale of Roxane Multisource Generic Product or BI Brand Product to any wholesaler, distributor, or another customer shall be considered a material breach of this Agreement. Mail order subsidiary pharmacies at the discretion of Chain Warehouse may be included.
- IX. Chain Warehouse agrees to provide mutually acceptable documentation to Roxane each calendar quarter of the marketshare attained by each Roxane Multisource Generic Product in this Agreement. (Documentation to be aggregate of Chain Warehouse distribution center locations)

**Roxane Commitment**

- I. Roxane represents that if Chain Warehouse fulfills all of the Chain Warehouse Commitment obligations of this Agreement, it shall receive a Rebate equal to 1% of its purchases of those BI Brand Products listed in Attachment 1.
- II. The Rebate, in the form of a credit for purchase of Roxane Products, shall be issued within 30 days of receipt by Roxane of the documentation verifying Preferred Marketshare for the previous calendar quarter. If participation in the Agreement commences during a calendar quarter, the rebate will be calculated from the first business day of the month following the signing date of the Agreement (retroactive to 1/1/99) or the date of the placement of the stocking order to comply with the Agreement, whichever is later.
- III. Roxane agrees that if it discontinues the manufacture of or fails to supply at a 95% service level any non-exclusive Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the discontinuation or supply failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for their duration.
- IV. Roxane agrees that if it fails to meet competitive market pricing of any Product(s) as defined in Attachment 1 of the Agreement, Roxane will pay the Rebate on the Roxane Product for the full quarter during which the failure occurred, based upon the quantity of the Roxane Product purchased by the Chain Warehouse during the previous quarter. Furthermore, Roxane will continue to pay the Rebate on any other signed Agreements for the duration of the agreement.

**Other Terms of Agreement**

- The term of this Agreement shall be one (1) year. This Agreement may be extended annually for one (1) year period (s) upon written agreement and acceptance by both parties.
- BI Brand Product purchases qualifying for the Rebate will be limited to the previous year's BI Brand Product purchases by Chain Warehouse (baseline) plus the BI Brand Product's national sales percent increase as reported by IMS. Purchases not direct from Boehringer Ingelheim, brokerage sales, hospital and federal/state government sales, and drop shipments for BI Brand Products are excluded from the previous year's BI Brand Product purchases baseline.
- Failure of Chain Warehouse to provide accurate documentation within 90 days of the end of the calendar quarter shall cause forfeiture of the Rebate.
- Roxane reserves the right to audit Preferred Marketshare data provided by the Chain Warehouse within twelve (12) months of submission of such data.

**\*EXCEPT AS OTHERWISE NOTED IN ADDENDUM #2**

- Except as required by law, each party shall at all times, whether during the term of this Agreement or subsequent thereto, honor, maintain and protect the confidentiality of the terms, conditions, and information provided pursuant to this Agreement as well as the substance of all discussions pertaining thereto. Nothing contained herein, however, shall prevent the disclosure of Product prices in response to requests for pricing information made by governmental agencies in connection with federal, state, or local governmental inquiries.
- Chain Warehouse represents that its receipt of rebates, credits, adjustments, discounts and performance of its obligations under the Agreement do not violate any of its legal, contractual or other obligations. The Rebate may constitute a discount or reduction in purchase price which may have to be disclosed to the governmental agencies under the regulations that govern the Medicaid program or other similar federal or state health care programs.
- Roxane will comply with all of its reporting obligations imposed under federal law for discounts and rebates and take the discount into account in computing their "average manufacturer price" and "best price" under the Medicaid drug rebate program.
- Chain Warehouse hereby offers Roxane the opportunity to counter any competitive pricing or proposals offered by any competitor, in order to maintain sales of any Product, which Chain Warehouse is purchasing from Roxane. Chain Warehouse shall provide Roxane notice of any competitive proposal and allow Roxane 5 business days to respond.
- Violation by Chain Warehouse of the "own use" covenant in this Agreement will be considered a material breach, permitting Roxane to cancel this Agreement in its entirety immediately upon written notice. In addition, Chain Warehouse would forfeit any earned or accrued but unpaid rebates for the disputed portion of its purchases.
- The deduction of the Rebate by Chain Warehouse prior to Roxane's issuance of credit, or prior to the payment due date shall be considered a material breach of this Agreement permitting Roxane to cancel this Agreement in its entirety upon written notice if not resolved within 30 days of notice to Chain Warehouse.
- This Agreement may not be assigned by either party without the written agreement of the other party.
- This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, and any and all disputes arising under or concerning this Agreement shall be before the courts of the State of Ohio.
- Roxane reserves the right to modify this Agreement at its own discretion, in writing, upon 30 days written notice to Chain Warehouse. Either party may terminate this Agreement at any time, provided 30 days written notice is given to the other party, and further provided that if Chain Warehouse terminates the Agreement prior to the one year term, such action shall result in Chain Warehouse receiving what they had earned.

Rite Aid Corporation, ("Customer"):

  
Signature

Irwin Wechsler  
Printed Name

Title

Date

Roxane Laboratories, Inc.:

Signature Attached On Select Version rrr

Signature

Printed Name

Title

Date

Effective Term

From: 4/1/99

Date

To: 3/31/00 rrr

Date

**ATTACHMENT #1**

**Roxane Commitment Agreement**  
**Chain Warehouse**

**Roxane Laboratories, Inc. Respiratory Product List:**

<b>PRODUCT</b>	<b>Strength</b>
ACETYLCYSTEINE SOLUTION	10% 20%
IPRATROPIUM BROMIDE INHALATION SOLUTION	0.02%
METAPROTERENOL INHALATION SOLUTION*	0.40% 0.60%
SODIUM CHLORIDE INHALATION SOLUTION	0.90%

**Roxane Laboratories, Inc. Loyalty Product List:**

<b>PRODUCT</b>	<b>Strength</b>
AZATHIOPRINE TABLETS	50mg
HYDROXYUREA CAPSULES	500mg

\*EXCEPT AS OTHERWISE NOTED IN ADDENDUM #2

**ATTACHMENT #1, cont.**

**Roxane Laboratories, Inc. Select Product List:**

<b><u>PRODUCT</u></b>	<b><u>Strength</u></b>
ROXICET TABLETS*	5mg/325mg
ROXICODONE TABLETS	5mg
ROXANOL ORAL SOLUTION	20mg/ml

**Boehringer Ingelheim Pharmaceuticals Respiratory Product List:**

<b><u>PRODUCT</u></b>	<b><u>Strength</u></b>
ALUPENT SYRUP	10mg/5ml
ALUPENT INHALATION AEROSOL	14g
ALUPENT INHALATION SOLUTION	5%
	0.4%
	0.6%
ATROVENT INHALATION SOLUTION	0.02%
ATROVENT INHALATION AEROSOL	14g
ATROVENT NASAL SPRAY	0.03%
	0.06%
COMBIVENT INHALATION AEROSOL	14.7g

\*EXCEPT AS OTHERWISE NOTED IN ADDENDUM #2

**ATTACHMENT #2**

**Roxane Commitment Agreement**  
**Chain Warehouse**

**Discontinued Incremental Incentive Programs**

**N/A**